

PT 01-63

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**WEST SIDE PLANNING &
DEVELOPMENT CORPORATION
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0030
(98-16-0961)
P.I.N: 16-09-427-030**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Christopher Martin of Flamm & Teibloom, Ltd. on behalf of the West Side Planning and Development Corporation. (hereinafter the “applicant”).

SYNOPSIS: This proceeding raises the following issues: first, whether applicant qualifies as an “institution of public charity within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-3 *et seq.* (hereinafter the “Code”); and second, whether real estate identified by Cook County Parcel Index Number 06-09-427-030 (hereinafter the “subject property”) was “exclusively used for charitable or beneficent purposes ...,” as required by Section 15-65(a), during any part of the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on July 1, 1999. The Board reviewed the Application and recommended to the Illinois Department of Revenue (hereinafter the

"Department") that the requested exemption be granted. The Department, however, denied the exemption by means of a determination, dated February 17, 2000, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 1-B.
3. The subject property is located in the midst of an economically disadvantaged neighborhood at 4920 W. Madison, Chicago IL and improved with a three story building that applicant intended to develop as a day care center. Tr. p. 39; Dept. Ex. No. 2.

B. Applicant's Organizational And Financial Structure

4. Applicant is an Illinois Not For Profit Corporation organized for purposes of:
(a) bringing about community revitalization; (b) facilitating economic and commercial redevelopment; (c) rehabilitating commercial properties; (d) and providing recreational, social and other programming for youth. Applicant Ex. No. 1; Tr. p. 10.

5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service in August of 1994. Applicant Ex. No. 3.
6. Unaudited financial statements disclose that applicant obtained revenue from the following sources, and incurred the following operating expenses, from January 1, 1998 through December 31, 1998:

SOURCE	TOTAL	% of TOTAL¹
REVENUES		
Government Grants	\$ 67,000.00	95%
Individual Contributions	\$ 3,444.96	5%
TOTAL REVENUES	\$ 70,444.96	
EXPENSES		
Salaries & Wages	\$ 11,812.91	15%
Architect	\$ 3,400.00	4%
Bank Service Charges	\$ 375.00	0%
Contractor	\$ 25,000.00	32%
Consultants	\$ 14,500.00	18%
Insurance	\$ 6,107.91	8%
Legal	\$ 4,995.00	6%
Office Supplies	\$ 598.00	1%
Office Expense	\$	1%

1. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the fourth column. Thus, \$67,000.00/ \$70,444.96=.9511 (rounded four places past the decimal) or 95%.

	680.00	
Postage	\$ 322.00	0%
Rent	\$ 4,800.00	6%
Payroll Taxes	\$ 1,208.20	2%
Telephone/Fax	\$ 2,456.06	3%
Utilities	\$ 2,187.00	3%
TOTAL EXPENSES	\$ 78,442.08	

Applicant Ex. No. 5.

C. Applicant's Ownership and Use of the Subject Property

7. Applicant acquired ownership of the subject property via a warranty deed dated October 14, 1997. Applicant Ex. No. 4; Tr. pp. 14-15.
8. Applicant purchased the subject property as the first part of a larger community revitalization project. Its plans for this specific property were to rehabilitate it so that it could be used as a multi-purpose facility. Tr. pp. 10, 18-20.
9. Applicant planned to have a day care center located in part of this facility. It proposed to have a service provider, Lutheran Family Mission (hereinafter "Lutheran"),² operate the child care facility pursuant to a lease arrangement.³ Tr. pp. 19, 43-44.

2. Applicant did not submit any organizational documents or financial statements pertaining to Lutheran.

3. Applicant did not submit its lease with Lutheran into the record.

10. Applicant planned to use other portions of the subject property for various programs that it intended to offer, such as computer literacy, and office space of its support staff. Tr. p. 20.
11. The subject property was not suitable for applicant's intended uses as of the date of purchase. Applicant was therefore required to first devise a plan for effectuating, and then actually make at least \$3.5 million in renovations to the property before it was suitable for such use. Applicant Group Ex. No. 7; Tr. pp. 10, 22-23.
12. Applicant: (a) had the subject property surveyed; (b) developed architectural plans for renovating said property; (c) had some soil boring tests performed thereon; (d) removed asbestos; (e) met with various Chicago City officials to discuss environmental issues on a monthly basis; (f) held lease negotiations with Lutheran; (g) began accepting bids for the reconstruction work; and, (h) attempted to procure necessary financing for its planned renovations, throughout 1998. Tr. pp. 23, 28-30, 31-34, 36, 41-43.
13. Applicant could not begin the actual construction process during 1998 due to lack of financing. For this reason, the subject property remained largely vacant throughout that time. Tr. pp. 21, 34, 40-41.
14. Applicant was able to procure whatever financing it needed to in December of 1999 and commence construction in October of 2000. Tr. pp. 34, 41, 45-46.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to

warrant exempting the subject property from 1998 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.* Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for such exemption under 35 **ILCS** 200/15-65(a) should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.” 35 **ILCS** 200/15-65(a). The statutory requirements for this exemption are, in this context, that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968). Both of these requirements are presently at issue, as the instant denial was predicated on lack of exempt ownership and lack of exempt use.

B. Lack of Exempt Ownership.

By definition, an “institution of public charity” operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious

conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

It cannot be disputed that fostering the economic revitalization of economically disadvantaged communities serves the public interest. Thus, applicant's primary barrier to obtaining exempt status does not lie in the constituency that it serves. Rather, its principal impediment lies in the fact that applicant did not have sufficient financing to

sustain its operations throughout 1998. For this reason, applicant did not engage in the activities necessary to qualify it as an “institution of public charity,” as that term is defined in Section 15-65(a) and the case law promulgated thereunder, for that tax year.

Applicant’s gross revenues for 1998 were \$70,466.99. This amounts to only 2%⁴ of the \$3.5 million that applicant needed to bring its ambitious plans into fruition. Because these financial resources represented but an infinitesimal portion of the required financing, and applicant’s prospects for procuring the remainder remained uncertain throughout 1998, any conclusions as to whether applicant’s operations for that tax year were consistent with those of an “institution of public charity” are purely speculative.

This is especially true where, as here, applicant’s purchase of the subject property represents but the first step in a multifaceted urban revitalization plan that defines applicant’s organizational purposes. However, applicant simply did not have the financing to sustain the operations of something that complicated during 1998. Thus, the most one can conclude from this record is that applicant intended to operate as an

4. $70,446.99/\$5,300,000.00 = .0213$ (rounded 4 places past the decimal) or 2%.

“institution of public charity” in 1998.

Applicant did take steps, namely purchasing the subject property and removing some of the asbestos from the building situated thereon, which manifested its intent to perform potentially “charitable” works during 1998. Nevertheless, the doubts that stem from applicant’s uncertain capacity to actually fulfill that intent must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). Hence, the fact that applicant obtained the financial resources necessary to fund its operations for tax years subsequent to the one currently at issue of no legal significance herein. Therefore, that portion of the Department’s determination which found that the subject property was not in exempt ownership during 1998 should be affirmed.

C. Lack of Exempt Use

The active adaptation and development of real estate for charitable or other exempt purposes can constitute exempt use in some circumstances. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). Nonetheless, whatever developmental efforts that applicant made must be viewed in light of: (1) how applicant ultimately intended to use the property (Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3rd Dist., October 13, 2000)); and, (2) what, if any, steps applicant took to actually develop the property for that intended use (Weslin Properties, supra).

One must place greater emphasis on actual, rather than intended use, because only the former is decisive on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). In the development context, this means that the exempt use requirement is not satisfied where the property remains vacant because the owner's capacity to engage in active adaptation is uncertain. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with* People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

Applicant did engage in asbestos removal and other incidental adaptation of the subject property. However, it bears emphasizing that applicant simply did not have the financial resources to sustain the operations necessary to actively develop the subject property for its intended use during 1998. Accordingly, applicant's timeline for accomplishing the requisite active, actual development remained speculative throughout that tax year.

Even if this were not true, the record lacks sufficient evidence to sustain the conclusion that the principal component of applicant's intended use, namely its plan to lease space to a third party, Lutheran, qualifies as an exempt use. Leased property cannot

be exempt absent appropriate evidence that: (1) the lessor qualifies as an exempt entity; and, (2) the lessee also qualifies as an exempt entity; and, (3) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owed the allegedly exempt leasehold, provided that neither the lessor nor the lessee are profiting from the enterprise. Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson").

I have previously concluded that applicant's mere intent to engage in potentially "charitable" operations during 1998 is legally insufficient to qualify it as an "institution of public charity" for that tax year. (*See, supra*, pp. 7-8). Furthermore, applicant submitted absolutely no organizational documents, financial statements or other documentary evidence to establish that Lutheran qualifies for exempt status. Absent this information, applicant, which bears the burden of proof in all exemption matters, (Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)), has failed to prove that its proposed leasing arrangement with Lutheran qualifies as an exempt use under Olson. For this and all the above-stated reasons, that portion of the Department's determination which found that the subject property is not in exempt use should be affirmed.

In summary, the subject property does not qualify for exemption from 1998 real estate taxes under Section 15-65(a) because applicant had not obtained a level of financing that would enable it to move beyond its mere intent to perform charitable works throughout 1998.⁵ Therefore, the Department's initial determination in this matter should be affirmed.

5. Nothing in the above should be interpreted as meaning that the subject property was, *ipso facto*, in ownership and/or in exempt use immediately once applicant acquired the requisite financing.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 16-09-427-030 not be exempt from 1998 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

10/3/01

Date

Alan I. Marcus
Administrative Law Judge

Applicant obtained that financing in tax years other than the one currently at issue. Accordingly, pursuant to People *ex rel.* Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980) and Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981), I offer no conclusions as to the subject property's exempt status in those tax years because any such conclusions fall outside the scope of this Recommendation.